



February 16, 2001

Ms. Diane Lund  
Vice President and Chief Financial Officer  
DePelchin Children's Center  
100 Sandman  
Houston, Texas 77007

OR2001-0595

Dear Ms. Lund:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144297.

The DePelchin Children's Center (the "center") received a written request for the following information pertaining to the center for the years 1998, 1999, and 2000:

- 1.) Sources and amounts for all income and expenditures of public funds.
- 2.) Copies of all contracts and applications for contracts by and between [the center] and contractors and CPS.
- 3.) List of all employees by names, titles, starting date and salary.
- 4.) All manuals and policies concerning the operation of [the center].

You describe the center as a section 501(c)(3) non-profit corporation that is required to make available to the public its annual reports and tax returns, and you have accordingly released to the requestor the center's annual audits and tax returns for 1998 and 1999. However, you contend that the center is not a "governmental body" for purposes of the Public Information Act (the "Act") and therefore is not required to release the other requested information. In the alternative, you contend that some of the requested information is excepted from public disclosure pursuant to sections 552.101 and 552.102 of the Government Code.

An entity that is supported in whole or in part by public funds or that spends public funds is a governmental body under the Act. *See* Government Code § 552.003(1)(A)(x) ("Governmental body" . . . means . . . the part, section, or portion of an organization,

corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.”). Public funds are “funds of the state or of a governmental subdivision of the state.” *Id.* § 552.003(5).

However, the Act does not apply to private persons or businesses simply because they provide goods or services under a contract with a governmental body. Open Records Decision No. 1 (1973). An entity that receives public funds in exchange for services as would be expected in a typical arms-length contract between a vendor and purchaser is not a governmental body. Attorney General Opinion JM-821 (1987); Open Records Decision No. 228 at 2 (1979). If, however, a governmental body makes an unrestricted grant of funds to a private entity to use for its general support, the private entity is a governmental body subject to the Act. *Id.* If a distinct part of an entity is supported by public funds within section 552.003(1)(A)(x) of the Government Code, the records relating to that part or section of the entity are subject to the Act, but records relating to parts of the entity not supported by public funds are not subject to the Act. Open Records Decision No. 602 (1992).

You describe the center as a non-profit corporation that receives grants from governmental agencies. You have provided this office with a representative sample of contracts into which the center has entered with the Texas Department of Protective and Regulatory Services and the City of Houston. After reviewing these contracts, it does not appear to this office that the center receives governmental funds for its general support; rather, the contracts appear to call for the center to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length commercial transaction. Attorney General Opinion JM-821 (1987); Open Records Decision No. 228 at 2 (1979). Assuming the contracts you have submitted to this office are truly representative of the other contracts into which the center has entered with other governmental entities, we conclude that the center is not a “governmental body” for purposes of section 552.003(1)(A)(x) of the Government Code, and therefore is not required to release any additional information to the requestor under the Act.<sup>1</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

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<sup>1</sup>Because we resolve your request under section 552.003(1)(A)(x) of the Government Code, we need not address the applicability of the exceptions to disclosure that you raised.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

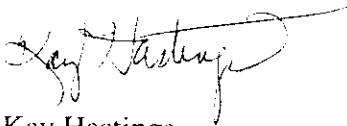
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kay Hastings", written over a horizontal line.

Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/RWP/seg

Ref: ID# 144297

cc: Mr. Gary W. Gates, Jr.  
2205 Avenue I #117  
Rosenberg, Texas 77471